



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 204271

PRELIMINARY RECITALS

Pursuant to a petition filed on January 27, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on February 15, 2022, by telephone. The hearing record was held open through March 1, 2022 for additional evidence from petitioner.

The issues for determination are 1) whether the petitioner's appeal was filed timely and 2) whether the agency correctly determined that petitioner was overpaid MA in the amount of \$1,414.25 for the period from March 1, 2017 to August 31, 2017 (claim [REDACTED]).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Wisconsin while receiving BadgerCare Plus (BCP) MA benefits in 2017.
2. While residing in Wisconsin, petitioner was homeless and received mail at the address of his sister, [REDACTED], at [REDACTED].
3. On March 13, 2017, petitioner called the agency to report that he would be in California for two weeks for a family emergency and returning to Wisconsin.
4. In August, 2017 the agency received a SWICA wage match showing wages for petitioner from [REDACTED], that petitioner did not report. After verifying the wages, the agency closed petitioner's BCP case.
5. On August 2, 2017, the agency issued to petitioner a notice of proof needed for FS and BCP, regarding [REDACTED] wages, due August 11, 2017. It was sent to petitioner at [REDACTED].
6. On August 25, 2017, petitioner contacted the agency by telephone and stated that he never worked at [REDACTED]. He was instructed to provide proof.
7. The agency reviewed State Wage Record reports showing wages paid to petitioner from employer [REDACTED] as alleged in 2017, identifying petitioner by social security number ending in [REDACTED].
8. On August 1, 2017, the agency received employer verification of wages from [REDACTED], for petitioner with a hire date of January 9, 2017 and identifying petitioner by name with an address of [REDACTED] and a social security number ending in [REDACTED].
9. On February 6, 2018, petitioner informed the agency that someone was using his identity and that the SWICA wages associated with his identity were not his. He was instructed to provide proof.
10. July 20, 2018, petitioner contacted the agency to state that he was still homeless and receiving mail at sister's address.
11. On April 15, 2021, agency found the most current address associated with petitioner, [REDACTED], from a New Hire Match in December, 2020.
12. On April 15, 2021, the agency issued to petitioner a MA overpayment notice, informing him that he was overpaid BCP benefits from March 1, 2017 to August 31, 2017, in the amount of \$1,414.25 because of client error for failure to report earned income. The notice was sent to him at [REDACTED]. The deadline to appeal was June 1, 2021.
13. The agency prepared a BCP overpayment worksheet for March 2017 to August 2017, showing a program income limit of \$1,005 for group of one; income for each month from March to August 2017 exceeding that limit,
14. The agency relied on a Claims Paid by Medicaid Report, showing that BCP was used to pay a claim of \$19.57 in April 2017; \$19.57 in June 2017; and \$114.97 in August 2017 and that monthly capitation fees for petitioner's enrollment were paid each month.
15. On May 4, 2021, the agency issued to petitioner a Medical Assistance BCP repayment agreement, informing him that he was responsible for repaying the overpayment balance of \$1,414.25 in full or completing and returning the repayment agreement by May 2, 2021 mailed to him at [REDACTED].
16. On May 7, 2021, petitioner completed a form entitled Identity Theft Victim's Complaint and Affidavit, providing his identity information and stating that he believed his sister [REDACTED]

██████████, aka ██████████, used his identity information to commit fraud. The form was signed and notarized and submitted to the ██████████ California Sheriff's Department.

17. On June 2, 2021, July 2, 2021 and August 3, 2021, the agency issued to petitioner dunning notices for the BCP overpayment, claim ██████████ in the amount of \$1,414.25.
18. On Jan 12, 2022 petitioner contacted the agency by telephone and reported to the supervisor that the ██████████ wages were related to identity theft.
19. On January 27, 2022, the Division received petitioner's request for hearing by facsimile.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the BC+ Handbook, § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The agency contends that the appeal was filed untimely. The notice of overpayment was issued by mail on April 15, 2021 to ██████████ an address that petitioner provided at one time for receipt of mail while he was homeless.

The agency sent the notice to the address it had on file which is the same address petitioner confirmed as a past Wisconsin address. The notices were not returned to the agency as undelivered or undeliverable. The notice, once correctly mailed, is presumed delivered and received. To overcome that presumption, petitioner must present evidence demonstrating that the notice was not actually received. This interpretation is confirmed by the following Wisconsin case law:

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. See, *Nack v. State*, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing *Wigmore, Evidence* 2d. ed.) § 2153; 1 *Wigmore, Evidence* (2nd ed.) § 95) *Mullen v. Braatz*, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); *Solberg v. Sec. Of Dept of Health & Human Services*, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); *Hagner v. United States*, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

*** (Portions of discussion not relevant here omitted)

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. *United States v. Freeman*, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. *United*

States v. Bowen, 414 F.2nd 1268, 1273(3d.Cir.1969); *Mullen v. Braatz*, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

See *State ex. Rel. Flores v. State*, 183 Wis.2d 587, at 612-3 (1994)

Petitioner testified credibly that he did not receive the overpayment notice. Two weeks before the notice was issued, he filed a law enforcement report in California, reporting a California address that was the same address he reported to the agency in January 2022 and was his address at the time of hearing. There is no evidence that whoever resided at the Imperial Lane address forwarded the notice or made petitioner aware of it. I find that the petitioner rebutted the presumption of receipt and delivery. He did not receive the April 15, 2021 overpayment notice. It is the Division's longstanding position that the absence of receipt of the notice tolls the time limit for appeal. The appeal deadline stated in the notice has no effect and petitioner's appeal is considered timely.

Because the appeal was found to be timely, the Division has jurisdiction to address the BCP overpayment determination.

The agency based the overpayment on a SWICA wage match showing wages for petitioner from [REDACTED] in Green Bay, Wisconsin. The wages were verified by the employer. If the wages are correctly associated with petitioner, it is not disputed that he was over the income limit and ineligible for BCP for the period from March 1, 2017 to August 31, 2017. Petitioner first asserted that he did not work at [REDACTED] on August 25, 2017, when he contacted the agency by telephone shortly after his FS benefits were terminated, to state that he never worked at [REDACTED]. He was instructed to provide proof. Again on February 8, 2018, he asserted the same thing and was instructed to provide proof. It was suggested to him that he either file a law enforcement report or contact the employer. He testified at hearing that he called [REDACTED] in 2017 to ask them to correct the matter, but that the employer failed to do anything. He did not file a report with law enforcement at that time. He did not in any way provide the agency with evidence that the wages were fraudulently or incorrectly attributed to him.

Nothing happened relevant to this dispute until April 1, 2021, when petitioner filed a law enforcement report in California alleging identity theft. He did not report to the California agency that someone worked at any employer using his identifying information. This report was apparently prompted by his learning of an unpaid utility bill he was being held responsible for. He complained only about utility bills for the period from Nov 5, 2015 to Feb 2, 2016 at [REDACTED], Wis. from Wisconsin Public Service that on March 30, 2021 he learned had been sent to collections.

He stated in an affidavit to the California agency that he thought his sister, whom he identified by name, committed the fraud. The [REDACTED] California Sheriff's Office identified its role as assisting the Green Bay Police Department, forwarded the complaint to them and did no investigation. On April 19, 2021, petitioner filed fraud reports with Green Bay Police Department (case [REDACTED]) but failed to follow through with information needed to complete the investigation. Petitioner's documentary evidence at hearing amounted to reports showing that he asserted identity theft but no evidence of an investigation or other evidence that identify theft was found, regarding anything, and certainly no evidence to show that someone other than petitioner earned the wages the employer [REDACTED] reported for him. There is no evidence that [REDACTED] had a motive to fabricate wage reports or that it made an error in this instance. Petitioner has consistently claimed over a period of several years that he didn't work at [REDACTED], however, the agency cannot be expected to disregard employer-reported wages based on petitioner's

mere assertion. Given that the fraud was associated with a series of physical addresses in Green Bay and that petitioner named his own sister as a suspect, it is likely that a law enforcement investigation would yield some conclusions about the veracity of his claim. No such information was presented by petitioner. The agency's contact with the Green Bay Police Department did not produce evidence to support petitioner's claim.

Petitioner seems truthful and has consistently maintained for years that he did not work for [REDACTED]. However, it cannot be denied that the claim petitioner makes is self-serving and that he has not corroborated his claim with objective evidence, such as a finding by a law enforcement agency or the employer that fraud or error occurred. In the absence of evidence to the contrary,

The record was held open to allow petitioner to provide additional evidence that he wages attributed to him were incorrect. He submitted documents that showed his claim of fraud but nothing that showed the claim was investigated or found to be true. Petitioner failed to show that he did not work at [REDACTED] as alleged or the wages that resulted in the overpayment were incorrectly attributed to him. The agency correctly relied on the employer's SWICA report and verification of petitioner's wages during a period of time when petitioner lived in Green Bay, where the employer was located. No other error in the overpayment determination was alleged and I found none.

Based on this record, I find by a preponderance of the evidence that the agency correctly determined that petitioner failed to report earned income over the program limit and was not eligible for the BCP benefits he received from March 2017 to August 2017.

CONCLUSIONS OF LAW

- 1) Because he did not receive notice of the overpayment determination, petitioner's appeal of the BCP overpayment determination is considered timely.
- 2) The agency correctly determined that petitioner was overpaid BCP in the amount of \$1,414.25 for the period from March 1, 2017 to August 31, 2017 (claim [REDACTED]), as a result of petitioner error for failing to report income above the program limit.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

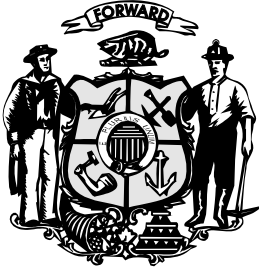
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of March, 2022

\s_ 

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 2, 2022.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability